NO. 87-1626

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALEXANDER RANCH, INC.

and

WENDYLOU RANCH, INC.,

Petitioners

v.

CENTRAL APPRAISAL DISTRICT OF ERATH, COUNTY, TEXAS, ERATH COUNTY APPRAISAL REVIEW BOARD and JAMES BACCUS,

Respondents

Supreme Court, U.S.
FILED
APR 26 1988
JOSEPH F. SPANIOL, JR.
CLERK

PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF TEXAS

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the denial of an open-space agricultural tax exemption, pursuant to TEX. TAX CODE Section 23.56(3) (Vernon, 1982), to lands owned by Petitioners, who are Texas Corporations, on the basis of classification of nonresident alien ownership, is violative of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution?

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SUMMARY OF ARGUMENT

Petitioners' writ should be denied because the statute in question does not violate the Equal Protection Clause of the Sixteenth Amendment to the United States Constitution.

REASONS FOR DENYING WRIT

Central to the argument of the Petitioners is that the classification created by TEX. TAX CODE Section 23.56 affects a suspect classification which requires a strict standard of review. (Petition, Page 15ff). The classification involved is not one involving a suspect class. Petitioners' error in this regard is due to the false statement that the classification in question is simply alienage. The classification involved is nonresident alienage. A classification based on nonresident alienage has never been held to a standard of strict scrutiny. Only classifications concerning resident-aliens have been ruled to be suspect.

Because a suspect classification is not involved the appropriate standard of review is the rational relation test. In addition, because

this is a tax statute the Texas Legislature is entitled to board discretion. Madden v. Kentucky, 60 S. Ct. 406, 408 (1939) and Lehnhausen v. Lake Shore Auto Parts Co., 93 S. Ct. 1001, 1003-1004 (1973); and Kahn v. Shevin, 94 S. Ct. 1734, 1737 (1974). Under the established criteria the statute in question is constitutional if the classification is fair and reasonably related to the object of the legislation. The Texas Court of Appeals has ruled that the purpose of the agricultural land exemption involved is to preserve and benefit the family farmer. (Petitioners' Appendix A, Page 16). Consequently, it is virtually self-evident that a classification aimed at denying this exemption to owners who are non-resident aliens is consistent with the legislative purpose. As the Texas Court of Appeals said in its decision of this matter:

> A reasonable distinction can be made between residents, whether citizens or aliens, and nonresident aliens. If the farm or ranch owned or controlled by residents should fail because of excessive taxation of agricultural land, these residents would have lost their means of income. There would be, as observed by the Texas Legislative Council, thousands joining the ranks of the unemployed and welfare rolls. If, however, farms or ranches owned by nonresident aliens or corporations controlled by nonresident aliens should fail, the owners of the agricultural land would have lost a speculative interest in the land but would not become a burden to the State or national welfare systems. The classification contained in Section 23.56 (3) rests upon differences having a fair and substantial relation to the object of the legislation; this classification does not violate the Equal Protection Clause. (Petitioners' Appendix A, Pages 18-19).

A substantial relation to the object of the legislation having been found by the Texas Courts, the key test for constitutionality is

established in favor of the statute in question.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be denied.

Respectfully submitted,



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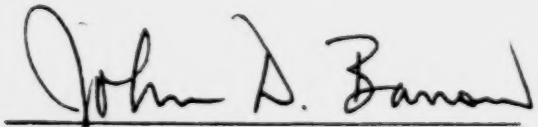
ATTORNEY FOR
RESPONDENTS

May 2, 1988

PROOF OF SERVICE

I hereby certify that three (3) copies of the foregoing were served on both Petitioners represented in this proceeding by mailing same, certified mail, return receipt requested, to Richard D. Coan, 138 N. Graham Street, Stephenville, Texas 76401 on the 2nd day of May, 1988, pursuant to S. Ct. Rule 28.

I further certify, pursuant to S. Ct. Rule 28.4(c), as U.S.C. Section 2403(b) may or may not be applicable, that I have served the Honorable Jim Mattox the Attorney General of the State of Texas three (3) copies of this Petition at State Capitol, Capitol Station, Austin, Texas 78711, by mailing same certified mail, return receipt requested, on above date.



JOHN D. BARROW